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TITLE 42 SPECIAL HIRING AUTHORITY – POLICY, RESPONSIBILITIES, REQUIREMENTS

1. **PURPOSE.** The purpose of this Order is to:
 - a. Specify the policy, roles and responsibilities for the management of the Environmental Protection Agency’s (EPA) Title 42 Program.
 - b. Specify the major requirements governing appointments under authority of 42 United States Code (U.S.C.) Sections 209(f) – (g) and under 40 Code of Federal Regulations (C.F.R.) Part 18. The Agency’s authority under both 42 U.S.C. Sections 209(f)–(g) and 40 C.F.R. 18 is abbreviated and referred to in this Order as “Title 42.”

2. **APPLICABILITY.** This Order applies to Title 42 appointees and all other EPA employees and officials involved in supporting, implementing, and administering the Title 42 Special Hiring Authority.

3. **BACKGROUND.** The Agency has a special hiring authority under the provisions of Title 42 and Reorganization Plan No.3 of 1970 (July 9, 1970). Under this authority, the Agency may employ scientists and special consultants without regard for the civil service laws. Under an administrative provision in Title II of the Interior, Environment, and Related Agencies Appropriations Act of 2006 (P.L.109-54), the Agency is authorized to use Title 42 authority to make up to five appointments per fiscal year in the Office of Research and Development from FY2006 to FY2011.

4. **POLICY.** This Order provides for the operation of the EPA Title 42 Program, which aims to ensure that the Agency utilizes the Title 42 authority to recruit and retain the talent needed to:
 - a. Ensure a critical mass of world-class science and engineering experts to strengthen EPA’s research and development programs in support of the Agency’s mission,
 - b. Maintain the necessary flexibility to shape regulatory decisions on emerging environmental issues, and
 - c. Provide program oversight of Title 42 related human resources, administrative actions, and guidance to organizations considering Title 42 appointments.

5. **RESPONSIBILITIES.**

- a. The Assistant Administrator for the Office of Research and Development (AA-ORD) or designee will:
 - (1) Allocate positions to be filled through Title 42 authority,
 - (2) Establish a process for conducting a professional and fitness review and examination of applicant qualifications,
 - (3) Establish the range and level of Title 42 compensation, including pay and non-pay compensation,
 - (4) Establish a process for developing compensation goals,
 - (5) Finalize the selection of candidates to receive Title 42 appointments, including the period of each appointment,
 - (6) Approve/disapprove appointment and post-appointment compensation targets, and
 - (7) Approve/disapprove renewal of appointments.
- b. The Assistant Administrator for the Office of Administration and Resources Management (AA-OARM) will provide oversight, advice, and support for Title 42-related human resources administrative actions, issues, and programs. The AA-OARM may delegate to the Director, Office of Human Resources (OHR), the authority to approve personnel actions for Title 42 appointees and provide or obtain all support required for human resources management of Title 42 appointees.
- c. The Director, OHR may redelegate certain personnel action authority and functions to a Human Resources Officer where such delegation includes but is not limited to personnel action authority in the areas of recruitment, appointment, compensation, performance management, and reassignment.

6. **REQUIREMENTS.**

- a. Allocation of Title 42 positions. The AA-ORD approves the allocation of Title 42 positions for recruitment, appointment and compensation.
- b. Duty assignments and the statement of work. Employees appointed under this authority are not subject to the General Schedule classification system established under Title 5 of the U.S.Code. As the Agency may specify, Title 42 appointees will have a written position description which describes their principal duties and responsibilities. The servicing Human Resources Office will provide assistance in determining the documentary specifications of the position description.
- c. Eligibility.
 - (1) General — The Agency will set minimum qualification requirements to assure the appointment of scientists and special consultants who have demonstrated the highest levels of achievement in education, post-graduate training, research accomplishments, publications and/or career development. Title 5 qualification standards, publications and career development guides may be used as guidance, but will not limit or prescribe the general or particular qualifications for Title 42 candidates, appointees, or positions. The qualification standards issued by the Office of Personnel Management for General Schedule positions under Title 5

will be used as a basis to determine the actual set of qualification requirements for a particular Title 42 position.

- (2) Foreign education — Foreign education must be evaluated in accordance with the Operating Manual for Qualification Standards for General Schedule Positions.
 - (3) Non-citizen applicants and appointees –A non-United States citizen applicant or appointee must be a citizen of a nation with a treaty aligned with the United States or a nation that has a legal employment arrangement with the United States. All non-U.S. citizens must have the appropriate employment visa.
 - (4) Visas — Appointments of non-U.S. citizens may not exceed the expiration date of the employment visa.
 - (5) Tenure – Title 42 appointments will be made initially for a period ranging from one year and one day to five years. Such an appointment may be extended for varying periods, not in excess of five years for each period, and requires approval by the AA-ORD or designee upon a written request by the Title 42 appointee’s immediate supervisor.
- d. Recruitment and selection. The AA-ORD, ORD selecting official, or other ORD officials as appropriate will determine the most appropriate recruitment and selection method in accordance with merit principles and the specifications of the Title 42 Operations Manual.
- e. Compensation. The AA-ORD or designee in consultation with the Title 42 servicing Human Resources Office will determine the most appropriate method for developing recommendations for appointment and post-appointment compensation. The AA-ORD or designee approves (or disapproves) appointment and post-appointment compensation recommendations.
- (1) Compensation – Includes annual pay and may also include incentive payments (for recruitment, relocation and retention) and cash awards. Determinations on appointee salary and compensation will be in accordance with specifications in the Title 42 Operations Manual. The Operations Manual will specify the structure and limits of Title 42 compensation, including aggregate compensation and annual pay.
 - (2) Initial determination of compensation – Initial compensation and incentive payments will be determined by a thorough review of the appointee’s qualifications and other appropriate factors, including salary history.
 - (3) Periodic compensation review after initial appointment -- Compensation of appointees will be reviewed, at least annually, by the appropriate ORD officials. The Title 42 Operations Manual will specify the procedures for compensation review.
 - (4) Leave accrual -- The initial annual leave accrual rate may be set at a rate of 6 or 8 hours per pay period with ORD management making the final determination on the actual initial accrual rate. The sick leave accrual rate will be set at 4 hours per pay period.
- f. Ethics and financial disclosure. Title 42 appointees are subject to the same laws, regulations, and policies as Title 5 appointees regarding ethics and financial disclosure at the time of appointment, during appointment, and after separating

from the Agency. See the Title 42 Operations Manual for details on guidance and procedures for filing disclosure information and related documents.

- g. Benefits. Title 42 appointees, are in general, eligible to receive the same benefits as Title 5 appointees, including annual and sick leave health insurance, life insurance, and retirement benefits.
- h. Retirement. Appointees who are converted from a Title 5 appointment directly to a Title 42 appointment will continue to be covered by the retirement system in which they were participating immediately prior to their appointment, i.e., the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS). Applicable regulations will govern the retirement system coverage of appointees with prior Federal service. All other appointees must participate in FERS.
- i. Training. Title 42 appointees are generally eligible for training on the same basis as Title 5 appointees.
- j. Travel allowances. A Title 42 appointee may be authorized travel and transportation or relocation allowances as follows:
 - (1) From place of residence within or outside the continental United States to the first duty station,
 - (2) For any change of duty station during employment, and
 - (3) From last duty station to the place of residence which the individual left to accept the employment, or to some other place at no greater cost to the Government.

A Title 42 appointee shall be entitled generally to travel allowances or transportation and per diem while traveling on official business away from his or her permanent duty station during the period of the appointment. A Title 42 appointee shall be entitled to travel and transportation allowances at the same rates as may be authorized by law and regulations for other civilian EPA employees.
- k. Inventions and royalties. Title 42 appointees will be governed by the same Agency and Federal policies and procedures as Title 5 appointees regarding inventions and royalties.
- l. Performance management. The Operations Manual provides the detailed guidance and procedures for Title 42 performance agreements and performance reviews.
- m. Awards and recognition. Title 42 appointees will be generally eligible, as appropriate, for the awards that can be given to Agency employees under the the provisions of Title 5 including both honorary and monetary awards. Total monetary awards per annum for Title 42 appointees may not cause total compensation to exceed the limit on total annual Title 42 compensation.
- n. Termination of appointment. A Title 42 appointee may be terminated for any lawful reason. See Title 42 Operations Manual for guidance on termination of appointments.
- o. Subsequent Federal Employment
 - (1) Appointees with Title 5 permanent competitive status. A Title 42 appointee with Title 5 permanent competitive status based on prior employment retains

reinstatement eligibility, but has no guarantee of return to a Title 5 position. If the appointee desires to return to a Title 5 civil service position following the Title 42 position, he/she must locate and be selected for such a position. These conditions are acknowledged by the appointee via signature on the Voluntary Conversion and Employment Notice, found in Appendix 6 of the Title 42 Operations Manual. (2) Appointees without Title 5 permanent competitive status. A Title 42 appointee who did not have Title 5 permanent competitive status based on prior employment, obtains no reinstatement eligibility due to service in a Title 42 position. If the appointee is interested in a Title 5 civil service position following the Title 42 position, he/she must apply and be selected for such a position.

7. **AUTHORITIES**

- a. 42 United States Code, Section 209(f) - (g)
- b. Title II of the Interior, Environment, and Related Agencies Appropriations Act of 2006 (Pub.L.109-54)
- c. 40 Code of Federal Regulations Part 18 (40 C.F.R. 18)
- d. U.S. EPA Order 3110.22
- e. Reorganization Plan No. 3 of 1970 (July 9, 1970)

8. **REFERENCES.** The EPA Title 42 Operating Manual provides information on the use of the Title 42 hiring authority based on the requirements defined in this Order.

9. **REVIEW DATE.** This Order will remain in effect for three years after its issuance unless extended or superseded by a subsequent Order.

10. **CONTACT INFORMATION.** Questions regarding this Order should be directed to the Human Resources Policy Division, Office of Human Resources, Office of Administration and Resources Management, (202) 564-7876.

11. **EFFECTIVE DATE.** This Order is effective on the signature approval date.